

## **ENVIRONMENTAL PROTECTION OFFICE OF AIR QUALITY MANAGEMENT**

### **Control and Prohibition of Air Pollution by Vehicular Fuels**

**Adopted Amendments:** N.J.A.C. 7:27-25.1, 25.3, 25.4 and 25.11 and 7:27A-3.10

**Adopted Repeals:** N.J.A.C. 7:27-25.8 and 25.9

Proposed: July 21, 1997 at 29 N.J.R. 3222(a).  
Adopted: July 17, 1998 by Robert C. Shinn Jr., Commissioner, Department of Environmental Protection.  
Filed: July 20, 1998, as R 1998, d.419, **without change**.  
Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.  
DEP Docket Number: 14-97-06/630.  
Effective Date: August 17, 1998.  
Operative Date: Upon the effective date of appropriate USEPA action, as discussed in the Introduction, below.  
Expiration Date: Exempt, N.J.A.C. 7:27; December 2, 1999, N.J.A.C. 7:27A.

### **Introduction**

The New Jersey Department of Environmental Protection (“the Department”) is adopting amendments and repeals at N.J.A.C. 7:27-25 under State law to eliminate requirements that the gasoline sold in the northern New Jersey counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren (“oxygen program control area”) between November 1 of each year and the last day of the following February (“oxygen program control period” or “oxygenated fuel season”) contain 2.7 percent oxygen by weight (“wintertime oxygenated fuel”). As is explained below, however, the repeal of the wintertime oxygenated fuel program will be operative only upon a finding by the United States Environmental Protection Agency (“USEPA”) that those areas within the oxygen program control area that are formally designated nonattainment for carbon monoxide (“CO”) are in attainment of the National Ambient Air Quality Standard (“NAAQS”) for CO. The areas would then no longer be required to continue with the wintertime oxygenated fuel program under Section 211(m)(6) of the Clean Air Act (42 U.S.C. §7545(m)(6)). These areas are the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren. The State demonstrated, as part of its proposed revision to New Jersey’s State Implementation Plan (SIP) for CO, that these areas have attained the NAAQS for CO. This CO SIP revision, which removes the requirements for a wintertime oxygenated fuel program in New Jersey, was prepared in coordination with this rulemaking. It not only demonstrates that the New Jersey portion of the New York-Northern New Jersey-Long Island moderate carbon monoxide nonattainment area (“multistate nonattainment area”) has attained the NAAQS for CO but presents data indicating that the entire multistate nonattainment area is in attainment. It shows further that the impact on the air quality in New York City of New Jersey-fueled vehicles (that is, vehicles fueled in New Jersey with Federal reformulated gasoline (RFG)) is minimal.

As is explained more fully in response to Comment 12 below, the Department will publish notice of the operative date in the New Jersey Register, after the USEPA makes the necessary finding of attainment.

The New Jersey portion of the multistate nonattainment area, (“northeastern New Jersey carbon monoxide nonattainment area”), consists of Bergen, Essex, Hudson, and Union Counties, and the Passaic County municipalities of Clifton, Passaic and Paterson. However, 42 U.S.C. §7545(m)(2) requires sale of wintertime oxygenated fuel throughout the entire Consolidated Metropolitan Statistical Area (“CMSA”), thereby requiring its sale in all of northern New Jersey, as well as portions of New York State and Connecticut. The requirements that wintertime oxygenated fuel be sold in the southern counties of New Jersey were repealed on November 20, 1995. (See 27 N.J.R. 4731(a) and 28 N.J.R. 851(a)).

This rulemaking does not affect the requirements for the Federal reformulated gasoline (RFG) program, which will remain in effect throughout New Jersey. As such, all gasoline sold throughout the State must continue to meet a minimum year-round averaged oxygenate content standard of 2.0 percent.

As mentioned above, the State proposed a revision to its CO SIP in conjunction with this rulemaking. This proposed SIP revision included:

- 1) Air quality and “hot spot” modeling data demonstrating that the four and a half county New Jersey portion of the multistate nonattainment area has attained the NAAQS for CO;
- 2) The removal of the requirements for the wintertime oxygenated fuel program in the northeastern nonattainment area;
- 3) An update to the State’s attainment demonstration indicating that the area attained the NAAQS for CO by December 31, 1996;
- 4) An update to the carbon monoxide emission inventory;
- 5) A maintenance plan which a) demonstrated the State will maintain the NAAQS for CO until the year 2009, and b) discussed the contingency measure(s) that would be implemented should the State ever again violate the NAAQS for CO; and,
- 6) A request that the USEPA redesignate the northeastern nonattainment area to attainment (“redesignation request”).

Although the State is submitting a carbon monoxide SIP revision to the USEPA concurrently with this adoption, as discussed in greater detail below, the submission will contain only certain portions and not all of the SIP revision originally proposed. Specifically, items 5 and 6 are no longer contained as part of this submission.

The Department held a public hearing on August 11, 1997 to provide interested parties the opportunity to present testimony on the Department’s proposed amendments and repeals, as well as the proposed revisions to the State’s CO SIP/Redesignation Request. The comment period ended at close of business, August 20, 1997. The Department received oral and written testimony on the proposed amendments and repeals from the following persons:

1. F.M. Anderson, Exxon Company U.S.A.
2. Robert Avaltroni, New York City Department of Environmental Protection
3. Donna Cahill, Environment Committee of Hoboken
4. Kathleen C. Callahan, United States Environmental Protection Agency
5. Deborah J. Campbell, Mobile Business Resources Corp.

6. Fred Craft, Oxygenated Fuels Association, Inc.
7. Eric DeGesero, Fuel Merchants Association of New Jersey
8. Jeanne M. Fox, United States Environmental Protection Agency
9. Richard Kassel, National Resources Defense Council (NRDC)
10. Robert W. King, Sun Company, Inc.
11. Jerrold L. Levine, Amoco Petroleum Products
12. John Maxwell, New Jersey Petroleum Council
13. John Rooney, New Jersey State Assembly
14. David Sterman, New York State Department of Environmental Conservation
15. R. Patrick Thompson, New York Mercantile Exchange

### **Summary of Hearing Officer's Recommendations and Agency Responses:**

John Elston, Administrator of the Department's Office of Air Quality Management, served as the hearing officer at the August 11, 1997 public hearing held at the Board of Public Utilities Building in Newark, New Jersey. The Hearing Officer recommended that the Department adopt the amendments and repeals, but delay the operative date for the amendments and repeals until such time as the USEPA has made the requisite attainment finding. Once the USEPA has found the area in attainment of the NAAQS for CO, a wintertime oxygenated fuel program will no longer be required in New Jersey under Section 211(m)(6) of the Clean Air Act. The finding of attainment of the NAAQS for CO by the USEPA will remove any outstanding legal impediments to implementing the repeal of the wintertime oxygenated fuels program. The Hearing Officer's recommendation departs from the Department's original expectation of ending the wintertime oxygenated fuel program for the 1997-1998 oxygenated fuel season, but was based, in part, on comments the Department received during the comment period. The Hearing Officer further recommended that the State submit some, but not all components of the proposed CO SIP revision/redesignation request to the USEPA for its review and approval. Specifically, the Hearing Officer recommended that the State submit the following portions of its proposed carbon monoxide SIP revision:

- 1) Air quality and "hot spot" modeling data demonstrating that the four and a half county New Jersey portion of the multistate nonattainment area has attained the NAAQS for CO;
- 2) The removal of the requirements for the wintertime oxygenated fuel program in the northeastern New Jersey nonattainment area, contingent upon the USEPA's finding that the area is in attainment of the NAAQS for CO;
- 3) An update to the State's attainment demonstration of the NAAQS for CO indicating that the area attained the NAAQS for CO by December 31, 1996;
- 4) An update to the carbon monoxide emission inventory;
- 5) An update to the contingency measure(s) for failure to attain the NAAQS for CO; and,
- 6) A commitment to update the transportation conformity budget upon, or prior to USEPA action.

The recommendation to include only these items is based on the following. The Department's carbon monoxide SIP revision indicates that the entire multistate nonattainment area has more than the two years of non-violating air quality data needed to request redesignation of the area. However, pursuant to 42 U.S.C. §7407(d)(3)(E)(ii), a state must have a fully approved SIP for the applicable pollutant under 42 U.S.C. §7410(k) prior to the area being redesignated. The State's enhanced inspection and maintenance (I/M) program SIP, which is part of its overall carbon

monoxide SIP and is required by the Clean Air Act, has been granted conditional interim approval by the USEPA, not full approval; a necessary condition for redesignation. As such, the State has withdrawn the redesignation request and maintenance plan from its carbon monoxide SIP revision submittal. However, the contingency portion that was contained in the proposed CO SIP revision remains in the final CO SIP revision.

The Department agrees with and accepts the Hearing Officer's recommendations.

The Department has determined to adopt the amendments and repeals, for the reasons explained in more detail in the Summary of Public Comments and Agency Responses, below. The Department's decision to delay the operative date of this adoption until after the USEPA makes a finding of attainment was based on comments received during the public comment period, on-going discussions with the USEPA, New York, Connecticut and New York City, and the recommendations of the hearing officer. In short, Section 211(m)(6) of the Clean Air Act (CAA) (42 U.S.C. §7545(m)(6)) states that the oxygenated fuel requirements of §211 shall not be interpreted to require the program in an area which is in attainment. The Department believes, therefore, that termination of the wintertime oxygenated fuel program is justified, once the USEPA finds that the area in question is in attainment of the NAAQS for CO.

The Department has also determined to submit the recommended portions of its carbon monoxide SIP revision to the USEPA. The Hearing Officer's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing is available upon payment of the Department's normal charges for copying (\$0.75 per page for first 10 pages, \$0.50 per page for the following 10 pages, \$0.25 per page for additional pages). Persons requesting copies should contact:

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Copies of this adoption document can be downloaded electronically from the Department's Air Quality Regulations Bulletin Board. The compressed file, OXY\_ADOP.ZIP, contains WordPerfect® 5.1 and ASCII documents and is located in file area #35 (Air: Props, Adopts, & Notices). The data line number for the Bulletin Board is (609) 292-2006. (Data bit: 8; Parity: N; Stop bit: 1) The adoption document is also posted on the Department's Air Quality Regulations web site at: <http://www.state.nj.us/dep/aqm/>.

### **Summary of Public Comments and Agency Responses:**

The number(s) in parentheses after each comment corresponds to the commenter numbers above to indicate the person(s) who submitted the comment. The comments are as follows:

#### **General Comments:**

1. COMMENT: Several commenters expressed their support for the Department's proposed rulemaking to end the wintertime oxygenated fuel program and/or their support for the State's proposed coordinating carbon monoxide SIP revision which reflects the repeal of the wintertime oxygenated fuel program, and which also includes a request that the USEPA redesignate that same area to attainment of the NAAQS for CO. The commenters stated that their support for ending the wintertime oxygenated fuels program was based, variously, on their perceptions that: 1) the wintertime oxygenated fuel program is no longer necessary and is a costly air pollution control measure; 2) the USEPA redesignation to attainment of the northeastern New Jersey carbon monoxide nonattainment area could result in wintertime cost savings by lowering oxygenation costs and simplifying recordkeeping, distribution, and compliance monitoring procedures; and 3) the removal of the wintertime oxygenated fuel program would benefit those businesses whose compliance with the program rules places them at a disadvantage in competing with those who do not comply. Another commenter stated further that the wintertime oxygenated fuel program was intended as an interim strategy to help a state achieve compliance with the NAAQS for CO while vehicle fleet turn-over, improved vehicle technology, and transition to the use of RFG were phased in to assure continued attainment of the NAAQS for CO. Since the wintertime oxygenated fuel program has fulfilled its interim function in New Jersey, the commenter argued, there is no need to retain it. (1, 5, 6, 7, 10, 11, 12, 13)

RESPONSE: The Department appreciates the commenters' support of its efforts to remove the requirements for its wintertime oxygenated fuel program in the northeastern New Jersey carbon monoxide nonattainment area. While the Department also appreciates the commenters' support for the redesignation request, the State has determined to not proceed with its request for redesignation at this time. As explained in the introduction to this notice of adoption, the State is withdrawing its redesignation request because it does not have a fully approved CO SIP.

The Department agrees that this interim measure is no longer necessary and that a reduction in wintertime cost expenditures for fuel providers, and ultimately, New Jersey motorists could result from the removal of the wintertime oxygenated fuel program in Northern New Jersey. As to the comment regarding the economic advantage of noncompliance with the Department's wintertime oxygenation requirements, the routine surveys on gasoline properties and content performed by certain refiners, importers or oxygenate blenders in compliance with the USEPA's fuel formulation requirements at 40 C.F.R. 80.68 indicate substantial compliance by all fuel providers in New Jersey with the requirements of the wintertime oxygenated fuel program. While the elimination of the wintertime oxygenated fuel program requirements may incidentally remove any economic advantage enjoyed by those who may have avoided the Department's requirements without penalty, the Department does not recognize this consequence as a legitimate basis for eliminating these requirements.

2. COMMENT: One commenter stated that the change from 2.7 percent wintertime oxygenated gasoline to the Federal reformulated gasoline (RFG) which is oxygenated to a minimum of 2.0 percent would increase carbon monoxide emissions in the entire region. In addition, the commenter suggested that premature removal of the wintertime oxygenated fuel program in New Jersey could result in violations of the NAAQS for CO similar to those experienced in New Jersey in 1994. The commenter noted that the Department's proposed carbon monoxide SIP revision shows a change in carbon monoxide emissions of less than two percent between 1995 and 1997. However,

if New Jersey's CO SIP revision reflected the State's 1994 and later emission inventory, the commenter found it unlikely that the reductions would be sufficient to guarantee compliance with the NAAQS for CO at all sites in 1998, since in 1994 the State exceeded the NAAQS for CO by more than two percent. The commenter also stated that the Department should base its estimates of the emission reduction benefits of wintertime oxygenated fuel and, conversely, the loss of emission reduction benefits due to its premature removal, on the USEPA's current MOBILE model. (2)

RESPONSE: The current USEPA Mobile Source Emissions Model indicates that removal of the wintertime oxygenated fuel program will raise CO emissions by about eight percent. However, additional analyses performed by the USEPA during the development of its next generation of the Mobile Source Emission model, Mobile 6, indicates the USEPA's current mobile model, MOBILE5a-h, may overestimate the benefits of using oxygenated fuels in newer technology motor vehicles, thereby overstating its importance in reducing carbon monoxide emissions from those vehicles.

All the air quality data from Connecticut, New York and New Jersey indicate the entire multistate nonattainment area has been in attainment since 1995. Within this time period, fleet turnover resulted in additional reductions in emissions as newer, cleaner cars replace older higher-emitting ones. The Department's air quality modeling indicates that removal of the wintertime oxygenated fuel program will have a minimal impact on the level of CO air quality in New Jersey and New York. All air quality monitoring data for Connecticut indicates that that state was in attainment before it implemented its wintertime oxygenated fuel program and therefore it should be able to maintain attainment even were the program ended. Further, as explained previously, this repeal becomes operative when the USEPA finds the area to be in attainment and therefore no longer required to have a wintertime oxygenated fuel program.

3. COMMENT: The USEPA commended New Jersey for its efforts to resolve the multistate nonattainment area issues by working with New York and Connecticut to reach a satisfactory solution which meets the needs of each state and, most importantly, continues to assure clean air for the citizens of the metropolitan area. The USEPA supplemented its comments to indicate the need for a demonstration for the New York portion of the nonattainment area in order to consider the effect of the termination of the wintertime oxygenated fuel program on New York's air quality. This demonstration was to be similar in quantity, quality and duration to the one performed for New Jersey. The USEPA indicated that adequate modeling of the effects of removing New Jersey's wintertime oxygenated fuel program on the New York portion of the multistate nonattainment area should consist of a minimum of 14 modeled traffic intersections in the five counties which make up New York City and in Westchester County. The USEPA indicated further that this modeling may be accomplished through a method referred to as a factor analysis, in which air quality dispersion modeling is not redone for these intersections, but the emissions impacts of the program change would be "factored" into the existing modeling to assess the overall impact in New York. Use of this method avoids an overly burdensome demonstration while remaining scientifically sound. (4, 8)

4. COMMENT: One commenter agreed with the Department's assessment that repeal of the wintertime oxygenated fuel program in New Jersey would not adversely impact areas of New York and Connecticut. (10)

5. COMMENT: A number of commenters opposed the repeal of the Department's wintertime oxygenated fuel requirements in Northern New Jersey because of a potential impact on New Jersey's neighboring states. Relying on the Federal RFG program only, without the benefits of the wintertime oxygenated fuel program, could result in increased carbon monoxide levels, leading to exceedences of the NAAQS for CO in New Jersey and its neighboring states. This could jeopardize attainment of the NAAQS for CO for the entire multi-state nonattainment area. New Jersey has not adequately considered the impact the removal of its wintertime oxygenated fuel program would have on its neighboring states of New York and Connecticut. (2, 9, 14)

RESPONSE to Comments 3, 4, and 5: The Department appreciates the support of several commenters for its efforts to work with the USEPA and the other states in the multi-state nonattainment area to remove the requirements for its the wintertime oxygenated fuel program in northern New Jersey without jeopardizing air quality in the region. The Department also appreciates the support expressed for its position that ending the wintertime oxygenated fuel program in northern New Jersey would not adversely impact the air quality of New Jersey's neighboring states.

As for Comment #5, the Department agrees that the wintertime oxygenated fuel program has played a role in the reduction of carbon monoxide emissions from motor vehicles in the northeastern portion of the State and the State's consequent attainment of the NAAQS for CO in that area, and acknowledges this role in the CO SIP revision. However, the Department's modeling indicates that it is the Federal RFG program which accounts for a significant portion (76 percent) of the carbon monoxide reductions in the northeastern New Jersey carbon monoxide nonattainment area achieved through the use of fuel oxygenates. Thus the State can rely on the carbon monoxide reduction benefits of RFG without the additional benefits attributable to wintertime oxygenated fuel in maintaining attainment of the NAAQS for CO. In fact, the State has demonstrated through modeling that the northeastern New Jersey carbon monoxide nonattainment area would have attained the NAAQS for carbon monoxide even without the implementation of the wintertime oxygenated fuel program. Please see Section IV of the State's CO SIP revision. The Department is confident that the combination of the Federal RFG program, the use of Tier I motor vehicles, and the State's enhanced inspection and maintenance (I/M) program will ensure that New Jersey will continue to maintain the NAAQS for CO throughout the State, again, even without a wintertime oxygenated fuels program.

As for the commenter's concerns regarding New Jersey's neighboring states, the Department has carefully studied this adoption's potential impact on the air quality in New York and Connecticut. As part of its analysis, in addition to the modeling performed prior to and subsequent to the State's proposed actions, the Department reviewed the monitoring data that indicates that the entire multistate nonattainment area is in attainment of the NAAQS for CO, that is, it has more than the requisite two years of non-violating air quality data needed for redesignation to attainment by the USEPA. For a more detailed discussion of the monitoring data for the portions of each of the three states which make up this nonattainment area, please see Section V of the State's CO SIP revision.

In response to the USEPA's request that a demonstration be performed for New York, New Jersey, in cooperation with representatives from the New York State Department of Environmental Conservation (NYSDEC), the New York City Department of Environmental Protection (NYCDEP), the Connecticut Department of Environmental Protection (CTDEP) and the USEPA, Regions I and II, performed the desired factor analysis. For this factor analysis, the Department used the 1992 New

York State attainment demonstration as the baseline. From this attainment demonstration, factors were developed which took into consideration the expected increases or decreases in emissions resulting from the following: 1) the increased benefit of the New York State's basic I/M program due to predictive differences between versions MOBILE4.1 and MOBILE5a-H of the USEPA's mobile emission factor model; 2) the penetration of vehicles potentially fueled in New Jersey and Connecticut with RFG (that is, vehicles using 2.0 percent oxygenated gasoline as opposed to the 2.7 percent wintertime oxygenated gasoline); 3) any loss in benefit from penetrating vehicles operating on RFG rather than wintertime oxygenated gasoline during the four-month control period in Northern New Jersey; and 4) I/M programs in New Jersey and Connecticut relative to New York's I/M program.

The results from this factor analysis indicate that, if New Jersey and Connecticut were to repeal their wintertime oxygenated gasoline program, vehicles fueled with New Jersey and Connecticut gasoline (2.0 percent oxygenated RFG) would have a minimal, if not insignificant impact on the predicted air quality at the indicator intersections in New York State. However, this analysis did predict that the air quality levels at six of the New York State's 11 indicator intersections examined may exceed the carbon monoxide health standard of nine parts per million (ppm), although the modeling performed by the Department was not sufficiently rigorous to make such a determination. Air quality data shows these areas to be in attainment of the NAAQS for CO with a margin of safety. It should also be noted that, within the rounding convention of the model used in the demonstration the impact of New Jersey-fueled vehicles would be less than 0.05 ppm and subsequently be rounded to 0.0 ppm, reflecting the number of digits reported by the model. The results of the factor analysis are summarized in Table I, below. A detailed description of the factor analysis and its results is included in Appendix I of the State's carbon monoxide SIP revision submittal.



### Summary of the Factor Analysis to Determine the Impact of Removing Wintertime Oxygenated Gasoline in New Jersey at the New York Indicator Intersections<sup>1</sup>

Intersection	Penetration of New Jersey vehicles into the county containing the intersection <sup>2</sup>	Predicted Maximum (ppm) <sup>3</sup>	Additional Impact resulting from consideration of New Jersey-fueled Vehicles operating on RFG <sup>4</sup> (ppm)
Route 9A and 42nd St.	0.093	8.8890	0.0402
1st Ave. and 57th St.	0.093	9.5023	0.0420
Herald Square	0.093	8.7871	0.0397
Columbus Circle	0.093	9.1291	0.0406
Queens Blvd. & Jackson Ave.	0.024	9.6207	0.0142
Queens Blvd. & Van Dam & Thompson	0.024	8.1097	0.0083
Flatbush Ave. and Tillary St.	0.029	9.3443	0.0127
Flatbush Ave. & Atlantic Ave. & 4th St.	0.029	10.1734	0.0150
Bruckner & Hunts Point	0.062	8.7717	0.0330
Old Country Rd & Clinton & Glen Cove Rd	0.01	9.5277	0.0071
Tarrytown Road (Rt. 119) & Central Ave. (Rt. 100)	0.046	8.6242	0.0232

**NOTE:** The USEPA CAL3QCH model is programmed to round all concentration estimates to the nearest tenth of a part per million (x.x ppm). For this analysis, the model was extended to provide the estimates to the nearest tenth of a part per billion (x.xxxx ppm).

Furthermore, the negative impact of vehicles operating at the New York City indicator intersection on RFG fuel as opposed to wintertime oxygenated fuel will diminish over time. This declining impact is due, in part, to increasing fleet turnover (older vehicles being replaced by newer, cleaner vehicles) and, the phased-in implementation of enhanced I/M programs. A more detailed

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<sup>1</sup> “Wintertime oxygenated gasoline” refers to the wintertime oxygenated fuels program (2.7% oxygenate), not the federal RFG program (2.0% oxygenate); the table assumes a basic I/M program in all three states..

<sup>2</sup>Penetration data provided by the USEPA, Region II and the Connecticut Department of Environmental Protection.

<sup>3</sup> Assumes that all vehicles in New York are operating as New York vehicles (that is, use of wintertime oxygenated fuels and New York’s basic I/M program)

<sup>4</sup> The additional impact of vehicles fueled in New Jersey with RFG (and not wintertime oxygenated fuel) and inspected with New Jersey’s basic I/M program at the penetration levels for the county in which the intersection is located.

discussion of these multi-state impact issues can be found in Section VI of the State's proposed CO SIP revision document.

### **Coordination of Actions with New York and Connecticut:**

6. COMMENT: Two commenters disagreed with New Jersey's contention that it could repeal the requirements of the wintertime oxygenated fuel program without the other states in its Consolidated Metropolitan Statistical Area (CMSA) doing the same. Their position was that since the wintertime oxygenated fuel program was originally formulated as a regional strategy to deal with both the transport of emissions from one part of the region to another, and the back and forth movement of vehicles through the multistate region, its elimination should also be handled on a regional basis. The commenters therefore requested that New Jersey coordinate any changes to its wintertime oxygenated fuel program with the states of New York and Connecticut to maintain consistency in the program throughout the New York-Northern New Jersey-Long Island multi-state non-attainment area. (2, 15)

7. COMMENT: The USEPA commented that it could approve a suspension of the wintertime oxygenated fuel program in New Jersey for the 1998-1999 winter fuel season, under Section 211(m)(6) of the CAA (42 U.S.C. §7545(m)(6)). This approval would be contingent, however, on the reinstatement of the wintertime oxygenated fuel program should there be a violation of the NAAQS for CO anywhere in the entire multistate nonattainment area. This suspension could be justified based upon: 1) the results of modeling already performed by the Department; 2) the results of some additional modeling; and 3) the start-up of New Jersey's enhanced inspection and maintenance (I/M) program, according to the implementation schedule detailed in the USEPA's approval notice of New Jersey's enhanced I/M program design in 1997. A second commenter supported the interpretation of the Clean Air Act which would allow a state to repeal the wintertime oxygenated fuel program provided the subject area had attained the NAAQS for CO, and that maintenance of the NAAQS for CO is assured following the termination of the wintertime oxygenated fuel program. (6, 8)

RESPONSE to Comments 6 and 7: The Department agrees with the USEPA's interpretation of 42 U.S.C. §7545(m)(6), that is, that Section 211(m)(6) of the CAA would allow New Jersey to end its wintertime oxygenated fuel program once the area has attained the NAAQS for CO. There has not been a violation of the NAAQS for CO (that is, two exceedences of the NAAQS for CO at a single air monitoring site within a 24-hour period) anywhere in the multistate non-attainment area since 1995. In fact, since 1996 the air quality monitors in the multistate region have only registered values greater than 7.0 ppm for 8-hour average CO concentrations on three occasions. Another indication of the appropriateness of finding this area to be in attainment of the NAAQS for CO is the fact that Connecticut has submitted to the USEPA a redesignation request for its portion of the multistate nonattainment area. Furthermore, although the wintertime oxygenated fuels program was initially implemented in 1992 as a regional strategy, the Federal reformulated gasoline program, which is yet another regional fuel strategy implemented in 1995, has largely obviated the need for additional fuel oxygenation requirements in the wintertime. However, the Department recognizes the need to coordinate its actions with the other states in the region and continues to work with Connecticut and New York to achieve a regional strategy.

The State's current carbon monoxide SIP includes, as the contingency measure adopted by the State for any failure to attain the NAAQS for CO, the Employer Trip Reduction (ETR) program, also known as the employee commute option (ECO) program. However, since the State no longer requires the implementation of a mandatory ETR program, this measure will not be used as a contingency in the event that the State does not attain the NAAQS for CO. Therefore, the SIP revision which will be submitted to the USEPA in coordination with the adoption of this rulemaking replaces the ETR program contingency measure with the reinstatement of the State's wintertime oxygenated fuels program in Northern New Jersey. This action should satisfy the USEPA's concern that the wintertime oxygenated fuel program be reinstated should there be a violation of the NAAQS for CO which could be ameliorated by a regional measure.

The Department has, as noted above and discussed in response to Comments 3, 4 and 5, completed the modeling identified as items 1 and 2. This modeling indicates that New Jersey's Enhanced I/M Program (the subject of item 3) is not necessary to maintain current compliance with the NAAQS for CO. However, implementation of the enhanced I/M program is underway at this time. Implementation will progress gradually as the various State-owned centralized inspection stations are renovated and the private inspection facilities purchase and install the new enhanced equipment.

8. COMMENT: One commenter opposed the State's proposed repeal of its wintertime oxygenated fuel requirements in Northern New Jersey, arguing that New Jersey does not appear to have addressed the impact the proposed repeal would have upon Transportation Conformity and related private, indirect source development decisions. The commenter asked if New Jersey had adopted a transportation conformity consultative process and, if not, whether the New Jersey Department of Transportation (DOT) and the affected Metropolitan Planning Organizations (MPOs) had engaged in deliberations with the Federal Highway Administration (FHWA) and the USEPA in the context of either the current or proposed New Jersey State Transportation Improvement Program (TIP). The commenter added that the State of New York should be involved in this consultative process when it occurs. (14)

RESPONSE: Although the State has not yet promulgated its transportation conformity rules, the State's three MPOs, NJDOT and the Department comply with the transportation conformity requirements set forth at 40 C.F.R. Part 93, including consultation requirements. The North Jersey Transportation Planning Authority (NJTPA), the MPO for northern New Jersey, regularly engages in consultation with all appropriate parties, including FHWA, FTA and EPA, as part of its Regional Plan/TIP conformity process. At the beginning of each new plan/TIP conformity cycle, NJTPA invites the New York Metropolitan Transportation Council (NYMTC), the MPO for the New York portion of the New York City metropolitan area, to participate in NJTPA's consultation process.

NJTPA also ensures that its conformity analyses are consistent with the Department's SIP assumptions, so that the conformity analyses measure only the emissions impacts of the package of plan and/or TIP transportation projects. Because the wintertime oxygenated fuel program is a Department regulation and not a transportation project, it is not included in an MPO plan or TIP. If a CO SIP includes a wintertime oxygenated fuel program, the program is included as a baseline assumption for the CO conformity analysis, and is therefore included in both the CO SIP emissions budget and in the conformity analysis. SIPs that do not include a wintertime oxygenated fuel program

do not include the program in either the CO SIP emissions budget or in the conformity analysis. Therefore, the wintertime oxygenated fuel program is not one of the variables that affect transportation conformity.

**MTBE:**

9. COMMENT: One commenter supported ending the use of the fuel additive methyl tertiary butyl ether (MTBE) to oxygenate gasoline in New Jersey. (13)

10. COMMENT: A number of commenters objected to the Department repealing the wintertime oxygenated fuel program based on public objections and anecdotal allegations of adverse health effects from exposure to MTBE. These commenters, although sympathetic to the concerns of the so-called “Oxy Busters,” argued that the adverse health effects from exposure to carbon monoxide emissions are more serious than the health-related symptoms attributed to MTBE. This assertion was based on recent studies which show that fuel oxygenated with MTBE is no more hazardous to human health than is non-oxygenated gasoline, in that it reduces the hazard from exposure to other harmful gasoline components which the oxygenate replaces. The commenters opposed reliance by the Department on either the ongoing studies on the health effects of MTBE or the unsubstantiated allegations which ignore credible scientific evidence as justification for ending the wintertime oxygenated fuel program in northern New Jersey. The commenters urged the Department to retain the wintertime oxygenated fuel requirements unless and until the negative health effects of MTBE have been conclusively established. (3, 6, 9)

RESPONSE to Comments 10 and 11: The Department is aware of, and is naturally concerned by, complaints regarding adverse health effects associated with the fuel oxygenate MTBE. As such, the Department continues to analyze those studies conducted to determine what, if any, health effects can be directly attributed to MTBE. These health studies have failed to conclusively establish a link between the use of gasoline oxygenated with MTBE and adverse human health impacts, but raise concerns, nonetheless. While the Department will continue to monitor this issue closely, its decision to repeal the wintertime oxygenated fuel program in Northern New Jersey was not based on health concerns alone. That is, the Department’s decision to repeal the wintertime oxygenated fuel program was based, not only on health concerns but on the conclusion that this program is no longer necessary in northern New Jersey, since the entire multistate nonattainment area has attained the NAAQS for carbon monoxide.

It should be noted, however, that ending the wintertime oxygenated fuels program in New Jersey will not mean an end to all fuel oxygenation requirements applicable to gasoline sold in New Jersey. Gasoline sold throughout the State will still have to meet the lower, averaged, year-round oxygenated gasoline standard of 2.0 percent established by the Federal RFG program. This Federal program is critical to the State’s strategy for continuing to maintain the NAAQS for CO. Furthermore, it should be noted that while many commenters have focused on the use of MTBE in gasoline, MTBE is not the only oxygenate available for use in complying with State and Federal oxygenation requirements. Both the USEPA and the Department have traditionally left the choice of oxygenate to the petroleum industry. In any event, as this rulemaking does not affect the Federal oxygenation requirements, the comment seeking an end to the use of MTBE as an oxygenate is outside the scope of this rulemaking.

11. COMMENT: One commenter asked if the Department was aware of any studies that address the relationship between vehicle emissions and changes in fuel economy due to oxygenation and, if so, what the oxygenation levels and vehicle speeds in these studies. (13)

RESPONSE: The commenter is directed to the following two studies which address this relationship:

- 1) Gething, J.A., J.S. Welstand, and J.C. Horn, "Are the Reductions in Vehicle Carbon Monoxide Exhaust Emissions Proportional to Fuel Oxygen Content?," Society of Automotive Engineers (SAE) paper #890216; and
- 2) Kivi, J., A. Niemi, and N. Nylund, "Use of MTBE and ETBE as Gasoline Reformulation Components," SAE Paper #922329.

These and other studies conclude that the energy loss from the blending of gasoline with an oxygenate is approximately one to three percent. However, since emissions are measured on a mass basis, that is, grams per mile, the loss in fuel economy is factored in and there is still a net decrease in the emission of carbon monoxide. That is, a car may travel fewer miles on a gallon of oxygenated gasoline than it would on a gallon of non-oxygenated gasoline (or, to a lesser extent, a gallon of gasoline which is oxygenated to a lower level, such as RFG), but for each mile traveled, the level of carbon monoxide has been reduced by the oxygenate. In addition, factors other than the oxygenate content of the fuel are far more significant in reducing fuel economy during the wintertime. Namely, the higher butane content of gasoline in the winter, the shift to shorter but more frequent trips during winter months, the higher frequency of vehicle idling on cold mornings, cold start-ups, and the effect of cold temperature on mechanical parts of the engine and the drive train all contribute to the reduction of fuel economy in the winter.

#### **Sufficient time to the providers:**

12. COMMENT: Several commenters expressed concern that fuel providers be given ample notice as to the gasoline oxygenation requirements which would be in effect on November 1, 1997. Suggestions included an optimum deadline for Departmental action of August 15, 1997 and a lead time of at least 45 to 60 days prior to the start of the 1997/1998 wintertime oxygenated fuel season. Another commenter sought the Department's assurance that it would not, under any circumstances, effect any changes in New Jersey's wintertime oxygenated fuel program until after the conclusion of the 1997-1998 wintertime oxygenated fuel season, and then only with significant prior notice of at least six months to the New York Mercantile Exchange (NYMEX), the petroleum industry and the public. Yet another commenter suggested that the State could provide adequate notice to fuel providers by delaying suspension of the wintertime oxygenated fuel program until the 1998-1999 wintertime oxygenated fuel season. (1, 8, 10, 15)

RESPONSE: In July of 1997, when the Department proposed to end the wintertime oxygenated fuels program it anticipated doing so by November 1, 1997, the start of the 1997-1998 oxygen program control period. While concerns regarding notice before the start of the 1997-1998 oxygen program control period are no longer relevant, the issue of sufficient notice to the regulated community is presumably of concern to the regulated community for upcoming seasons. The operative date of this adoption is contingent upon USEPA action. Given the notice concerns that

industry has expressed, the Department anticipates that the USEPA will give ample notice of its finding that the area is in attainment and therefore no longer required to have a wintertime oxygenated fuel program under Section 211(m)(6). For its part, the Department hereby commits to further inform interested persons of USEPA's action and the resulting final operative date of this adopted rule repeal by publishing a public notice in the New Jersey Register; the Department may also issue a press release.

### **Fuel Supply Disruptions:**

13. COMMENT: One commenter expressed confidence that no fuel supply disruptions would result should the Department decide to remove the wintertime oxygenated fuel requirements for the 1997-1998 wintertime oxygenated fuel season. (10)

RESPONSE: The Department appreciates the commenter's assurance that the fuel providers could have responded to the proposed regulatory requirement change from 2.7 percent to 2.0 percent oxygenated fuel in time for the 1997-1998 wintertime oxygenated fuel season. While notice regarding the 1997-1998 season is, of course, no longer relevant, the Department is confident that operation of this adoption contingent upon USEPA action will be appropriately noticed, thereby helping to ensure that the transition away from these wintertime oxygenated fuels program will not result in supply disruptions.

14. COMMENT: One commenter stated that the fuel companies could not deliver both wintertime oxygenated fuel and RFG to separate jurisdictions in the same region and as a result, the fuel meeting the more restrictive requirements would prevail for the region. Even if the fuel providers could successfully deliver both types of fuel to the same area, the commenter expressed concern that there would be additional administrative costs and burdens on the various states to insure that they are receiving the proper fuel. (2)

RESPONSE: The fuel providers do not appear to share this commenter's concern that they would be incapable of or otherwise inconvenienced by delivering more than one type of fuel product to separate jurisdictions in the same region. In fact, those who have commented on this proposal have primarily been concerned that the State give the fuel industry enough notice of upcoming fuel requirements so that they can respond without hardship. It is possible that, if required to meet different oxygenation standards in one region, the fuel providers could choose to provide one fuel which will satisfy the more stringent fuel requirements, and thereby ensure that all requirements are met. That is, for those areas where it is impossible to segregate fuel types, the Department's action does not preclude the sale of 2.7 percent oxygenated fuel, it simply no longer requires that it be provided. In any event, the decision to produce two different fuels, if necessary, to meet two different oxygenation standards, or one fuel which satisfies both, is left to the fuel provider. While uniformity of fuel requirements between the New Jersey, New York and Connecticut portions of the multistate nonattainment area is certainly desirable, New Jersey has no control over when or if New York State or Connecticut will repeal their wintertime oxygenated fuel requirements. In addition, a desire for fuel uniformity in the region is not sufficiently compelling to keep New Jersey from ending its wintertime oxygenated fuel program once the USEPA has found the area to be in attainment of the NAAQS for CO, making the area eligible for program termination under Section 211(m)(6) of the Clean Air Act.

15. COMMENT: One commenter expressed concern that the Department's proposed actions to suspend the wintertime oxygenated fuel program may be in violation of the Clean Air Act (CAA), and urged the Department to ensure that its actions comport fully with Federal law and all administrative and procedural requirements. Specifically, the commenter argued that there are three prerequisites to the Department repealing its wintertime oxygenated fuel program if it is no longer needed as a control measure for carbon monoxide: 1) the USEPA must concur that the entire multistate nonattainment area is in attainment of the NAAQS for carbon monoxide and that the wintertime oxygenated fuel program is not necessary to maintain such attainment status, as required by the CAA provisions at 42 U.S.C. §7545(m); 2) New Jersey must comply with its own procedural requirements and must take into account public comment, pursuant to N.J.S.A. 26:2C-8 and 52:14B-4; and 3) New Jersey must not act until it has amended its CO SIP in a manner consistent with the Federal administrative laws set forth at 5 U.S.C. §§551 *et seq.* (15)

RESPONSE: The Department is confident that its action in adopting this rule complies with all applicable laws and regulations, including the Clean Air Act. This adoption will not become operative and therefore will not be implemented until the USEPA takes appropriate action under the Clean Air Act. As to the commenter's listed prerequisites, the Department believes that the entire multistate nonattainment area, including the New Jersey portion, has attained the NAAQS for CO and the Department therefore expects that the USEPA will confirm this fact with a formal finding of attainment for the entire area. In fact, the USEPA, in its comments regarding this proposed rulemaking and the concurrent proposed carbon monoxide SIP revision (summarized in part above as comment 7) indicated that the State could suspend its wintertime oxygenated fuel program, based upon: 1) the results of the modeling already performed by the State; 2) the results of additional modeling requested by the USEPA; and 3) the start-up of the State's enhanced I/M program. The Department has completed the additional modeling requested by the USEPA (referred to as the factor analysis) which indicates that the State's decision to end the wintertime oxygenated fuel program will not adversely affect the air quality in New York. In addition, New Jersey is proceeding with the implementation of its enhanced I/M program. The State is currently reviewing the bid it received in response to its Request for Proposal (RFP) for a contractor to implement the State's enhanced I/M program, and has announced to the Legislature its intent to award the contract in accordance with State law.

In compliance with both New Jersey's and the USEPA's procedural requirements, the Department held a public hearing on August 11, 1997 on both the proposed CO SIP revision and the proposed rule amendments and repeal, after providing the requisite notice of public hearing. Comments were accepted until close of business, August 20, 1997. Comments on both the rule proposal and the proposed CO SIP revision are summarized and responded to in this Summary of Public Comments and Agency Responses. The Department will continue to work in cooperation with the USEPA to ensure that its carbon monoxide SIP revision is reviewed and approved in a timely manner consistent with Federal administrative law. The final CO SIP revision will now be submitted for the USEPA review and approval. As to the commenter's reference to the Federal Administrative Procedure Act ("APA"), (5 U.S.C. §§551 *et seq.*) as being applicable to state SIP actions, the Department must disagree. Revisions to state SIPs are governed by the USEPA's SIP rules, set forth at 40 C.F.R. Part 51 Subpart F- Procedural Requirements and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 *et. seq.* While these SIP rules may reflect the principles of the Federal Administrative Procedure Act, that Act is not directly applicable to State actions. Rather,

its requirements apply to actions taken by the covered Federal agencies. Neither the Federal APA, nor the Clean Air Act, make the terms of the Federal APA applicable to state SIP revisions. Instead, the Clean Air Act expressly states at 42 U.S.C. §§7410(a)(2) and (l) that SIPs and revisions to SIPs are to be adopted by states and submitted to the USEPA only after "reasonable notice and public hearing" as defined by the USEPA. 40 C.F.R. Part 51 Subpart F sets forth the USEPA's adopted regulations defining "reasonable" notice and hearing. These rules are fully consistent with New Jersey's Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The Department has fully complied with the New Jersey APA and 40 C.F.R. §51.102 in proposing to revise its CO SIP and in proposing these rule amendments and repeals.

16. COMMENT: One commenter suggested that the Department's proposed actions could affect New York City's site-specific modeling for environmental and conformity analyses. The commenter expected the greatest impacts to be on sites near the Hudson River portals and Staten Island, rather than on the site in Brooklyn, the site for which New Jersey performed the modeling for its CO SIP revision. Although New York City identified the Brooklyn site as the site New Jersey should include in its modeling exercises, the site was chosen because it had recent traffic data available, had recently been modeled by New York City itself, and the site had the highest modeled emission factor results in the New York CO SIP, not because it would represent the general impacts of changes in the oxygenated fuel requirements for the region. (2)

RESPONSE: The Department extensively consulted the USEPA, New York, Connecticut and New York City in drafting its proposed CO SIP revision. As mentioned by the commenter, the site used by the State in modeling the effect that ending the wintertime oxygenated fuel program in New Jersey would have on the air quality in New York City was chosen by NYCDEP.

New Jersey does acknowledge that removal of the wintertime oxygenated fuel program will lead to an increase in emissions factors and possibly to predicted CO air quality increases. The air quality data indicates the entire multistate nonattainment area is in attainment. The factor analysis indicates that New Jersey-fueled vehicles have minimal if not insignificant impact at the New York indicator intersections, including the intersection of Route 9A and 42<sup>nd</sup> Street, the closest indicator intersections to one of the portals. The Department does not believe there remains any compelling justification to retain the wintertime oxygenated fuel program based on the information it has and the legal requirements set forth in the Federal Clean Air Act.

17. COMMENT: One commenter wished to clarify an apparent misunderstanding with respect to the calendar years of meteorological data that were used by New Jersey to model the New York City intersection in Brooklyn. New York City had advised New Jersey to use, for modeling purposes, the five most recent calendar years of meteorological data, ending with 1995. However, when performing its modeling, New Jersey used only the meteorological data for calendar year 1995. (2)

RESPONSE: In performing the original analysis of the indicator intersection in Brooklyn, New York, the Department did follow New York City staff recommendations by using, for modeling purposes, the five calendar years of meteorological data ending with 1995. However, the Department determined that using the 1995 meteorological data predicted the highest CO concentrations.



Therefore, for the analysis performed, the scope of the analysis was confined to using the 1995 meteorological data.

### **New Jersey Needs the Enhanced Inspection and Maintenance (I/M) Program Before Removing Wintertime Oxygenated Fuel Requirements:**

18. COMMENT: Two commenters took the position that New Jersey should not repeal the wintertime oxygenated fuel program before it implements a substitute program which is capable of achieving carbon monoxide emission reductions equivalent to those which the USEPA has attributed to the wintertime oxygenated fuel program. Specifically, the commenters urged the Department to retain the wintertime oxygenated fuel program in Northern New Jersey until enhanced I/M programs are implemented in New Jersey, New York and Connecticut, as required by each state's CO SIP and the Clean Air Act. This would prevent a significant increase in carbon monoxide emissions from motor vehicles when the wintertime oxygenated fuel program is suspended. By waiting until a substantial number of vehicles have been inspected under a fully-implemented New Jersey enhanced I/M program, New Jersey can provide a cushion to assure continued compliance with the NAAQS for CO, even if unusual meteorological conditions were to elevate the measured carbon monoxide levels in the region. (2, 14)

RESPONSE: The State has shown, in the revision to its carbon monoxide SIP, that the multistate nonattainment area as a whole, including the northeastern New Jersey carbon monoxide nonattainment area, meets the NAAQS for CO and has shown that the removal of its wintertime oxygenated fuel program will not jeopardize this continued compliance. The State does not believe, therefore, that it needs to wait for full implementation of its enhanced I/M program before ending the wintertime oxygenated fuel program. The Department does agree with the commenters that implementation of New Jersey's enhanced I/M program is an important part of the State's overall plan to maintain the NAAQS for CO. Implementation of the enhanced I/M program is underway at this time. Implementation will progress gradually as the various State-owned centralized inspection stations are renovated and the private inspection facilities purchase and install the new enhanced equipment.

### **State Implementation Plan Revision Specific Comments:**

19. COMMENT: One commenter recommended that New Jersey include the wintertime oxygenated fuel program as a contingency measure in its maintenance plan. The commenter stated further that both New York and New Jersey must commit to reviewing any violations of the NAAQS for CO that may occur in the multistate nonattainment area after the wintertime oxygenated fuel program ends in New Jersey, and should agree to re-instate the program, with appropriate notice provided to the regulated community, if these violations are attributable to the repeal of New Jersey's wintertime oxygenated fuel program. (14)

RESPONSE: The proposed revision to New Jersey's CO SIP did include such a contingency measure as part of its maintenance plan, providing for the re-implementation of the wintertime oxygenated fuel program in northern New Jersey should such a violation of the NAAQS for CO occur. Specifically, the proposed CO SIP revision states that "[i]f a violation of the NAAQS were to occur, New Jersey would first analyze all available data regarding the air quality, meteorology, and

related activities in the area to determine the cause of the violation. If, after this analysis is complete, it is determined that the violation was caused by non-local motor vehicle usage (that is i.e., not due to a local traffic problem, a special event or stationary sources, and not occurring during the same meteorological episode as the first exceedence), then the State would re-institute the requirements for wintertime oxygenated fuel on a regional basis.”

20. COMMENT: Several commenters asked for clarification regarding the contingency measure contained in New Jersey’s proposed CO SIP revision. Specifically, the commenters asked whether re-implementation of the wintertime oxygenated fuel program in the northeastern New Jersey carbon monoxide nonattainment area would be triggered by one exceedence or one violation (two exceedences at the same site in a 24-hour period). The commenters supported a violation, not a single exceedence, as the reasonable trigger for the contingency measure. (1, 5, 11, 12)

RESPONSE: In its proposed carbon monoxide SIP revision, it was the Department’s intent that the trigger for reinstating the requirements for a wintertime oxygenated fuel program in the northeastern New Jersey carbon monoxide nonattainment area be two exceedences at one site (that is, one violation) of the NAAQS for CO.

#### **Completion of Rulemaking/SIP Approval as Quickly as Possible:**

21. COMMENT: Several commenters urged the Department to expeditiously complete its rulemaking and to work with the USEPA to obtain approval of the carbon monoxide SIP revision as soon as possible. (1, 5, 11, 12)

RESPONSE: While the Department has worked as expeditiously as possible to adopt these amendments and repeals and get approval from the USEPA of the CO SIP revision, this process involved difficult multistate issues. New Jersey believes its actions are consistent with the Clean Air Act and that the wintertime oxygenated fuel program is no longer needed in New Jersey as a control strategy to maintain compliance with the NAAQS for CO. The State has submitted a carbon monoxide SIP revision to the USEPA for its review and approval. This SIP revision, based on the Department’s proposed SIP revision, includes the repeal of the wintertime oxygenated fuel program in Northern New Jersey, but no longer includes: 1) the request for the USEPA to redesignate the New Jersey portion of the multistate nonattainment area to attainment of the NAAQS for CO; 2) the maintenance plan; or 3) the contingency measure(s). The State had deferred taking action on the proposed rule amendments and repeal and SIP revision until this time in order to participate in negotiations with the USEPA, New York, Connecticut, and New York City, which included the completion of additional modeling analyses. The Department will continue to work closely with the USEPA and the other states within the multistate nonattainment area to facilitate an expedited review and approval of New Jersey’s carbon monoxide SIP revision.

22. COMMENT: One commenter asked that the comment period be extended an additional month to provide time to disseminate the proposed rule amendments and repeal and the proposed SIP revision to a larger group of concerned citizens and elicit their comments. (3)

RESPONSE: The Department did not extend the comment period beyond the original closing date of August 20, 1997. This date was originally chosen because it both complied with all

administrative rulemaking requirements and was early enough to allow the State to end the wintertime oxygenated fuel program in time for the 1997-1998 oxygen program control period. Notice of the rulemaking was provided as early as July 7, 1997, when legal advertisements announcing the public hearing and the availability of the proposal for public inspection appeared in five New Jersey newspapers of general circulation. Notices of the hearing and availability of the proposal were also mailed to over 600 interested parties, also on or about July 7, 1997. The proposal was also available for public inspection on the Department's electronic bulletin board, its public information center and regional offices, and public libraries located throughout the State. Given the extensive public notice efforts made, the Department felt it was neither prudent nor necessary to extend the comment period.

### **Federal Standards Statement**

The proposed changes to the Department's rules will not modify the program design so as to in any way impose standards or requirements that exceed those contained in Federal law. Accordingly, neither Executive Order 27 (1994) nor N.J.S.A. 52:14B-23 requires a cost-benefit analysis.

Full Text of the adoption follows:

#### 7:27-25.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

...

"Control period" means the applicable period each year during which gasoline within a control area is subject to the RVP standards set forth at N.J.A.C. 7:27-25.3.

...

"Nonconforming gasoline" means any gasoline with an RVP content that does not satisfy the standards set forth in N.J.A.C. 7:27-25.3 during the applicable control period.

...

#### 7:27-25.3 General provisions

(a) - (b) (No change.)

(c) Wholesale purchaser-consumers and retailers shall be exempt from the RVP standard established in (a) above during the month of May.

#### 7:27-25.4 Recordkeeping and compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. During any applicable control period established pursuant to N.J.A.C. 7:27-25.3, test all gasoline prior to its release from a refinery, import facility, blending facility or distribution facility for use in a control area within the State to determine its RVP, and for each test prepare a test report which documents the RVP of the gasoline;
2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i.-ii. (No change)

3. Maintain records on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, which document the RVP of the gasoline; shipment quantity; shipment date; and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.
- (b) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline, including the RVP of the gasoline; delivery quantity; date of delivery; and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.
  - (c) Any sampling of gasoline required pursuant to the provisions of this subchapter for determining the RVP of gasoline shall be conducted in accordance with the following methods:
    1. For manual sampling: ASTM D4057; or
    2. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987).
  - (d) (No change.)
  - (e) (No change in test.)

#### 7:27- 25.8 Owner and operator responsibility

(No change in text.)

#### 7:27- 25.9 Service fees

(a)-(b) (No change.)

#### 7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) - (l) (No change.)

- (m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

1. - 24. (No change.)

25. The violations of N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

<u>Citation</u>	<u>Class</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
'''	'''	'''	'''	'''	'''

26. - 30. (No change.)

(n) - (p) (No change.)